



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/169425

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 02, 2015, at Milwaukee, Wisconsin.

This case was originally set for a hearing on November 5, 2015. The petitioner failed to appear for the hearing, and on November 6, 2015 the Division of Hearings and Appeal issued a decision dismissing the petitioner's appeal due to her failure to appear. The petitioner requested a rehearing on November 6, 2015. I granted that rehearing and a hearing was scheduled and held on December 2, 2015.

The issue for determination is whether the agency correctly discontinued the petitioner's FS because she failed to comply with work program requirements in three months.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is an able-bodied adult without dependents.
2. On June 1, 2015 the petitioner completed a renewal for her FoodShare (FS) benefits. The agency referred the petitioner to the FoodShare Employment and Training Program (FSET) program.
3. The petitioner was scheduled for FSET orientations on June 11, 2015, June 23, 2015, July 1, 2015, and July 13, 2015. The FSET program mailed the petitioner written notice of each FSET appointment. The petitioner failed to call or show for these four appointments. She never enrolled in the FSET program.
4. The petitioner received FS benefits in July, August, and September, 2015.
5. On September 18, 2015 the agency mailed the petitioner a notice stating that her FS benefits were terminating effective October 1, 2015 for failing to participate in the FSET program.
6. On October 15, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
7. The petitioner did not provide any information to the agency alleging that she was disabled prior to October 2015. Based upon the information provided in October 2015 the petitioner is not disabled, and is able to participate in substantially gainful activity within the national economy.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. *FoodShare Wisconsin Handbook*, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the *FSET Handbook*, as follows:

6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;

- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see *FoodShare Wisconsin Handbook* at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. *FoodShare Wisconsin Handbook*, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. *Ibid.*, §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS *after* meeting the requirement for 30 days). *Ibid.*, §3.17.1.11. A person may also be exempt from the program if she is unfit for employment, that is, he is unable to work as evidenced by a statement by a health care professional or social worker. *FoodShare Wisconsin Handbook*, §3.17.1.5.

The *FSET Handbook*, at section 3.5.2, specifically addresses a failure to enroll situation, as follows:

In order for a non-exempt ABAWD to meet the work requirement through FSET participation and maintain ongoing FS benefits after the TLB month, s/he must be enrolled and fully participating in FSET by the 10th day of the third TLB month. The FSET worker should document in PIN comments information relating to each contact that is attempted.

In this case the petitioner failed to enroll. The petitioner ignored all of the FSET notices until she exhausted her three time limited benefit months, and was looking at a 36 month sanction. At that time the petitioner requested a fair hearing.

The petitioner argues that she should be exempt from the FSET program due to a foot issue that causes her to be unable to work. The petitioner presented an October 16, 2015 letter from a physical therapist stating, “[she] is currently receiving physical therapy to decrease pain and improve function in her left foot post bunionectomy. Continued difficulty with balance, walker, 1st toe range of motion, and activity tolerance remain at this time.” She also presented an October 15, 2015 letter from a doctor stating that she is under the doctor’s care due to pain in her foot. These documents were not presented until October 2015 after her FS benefits had already terminated. Prior to October 2015 there was no information that the petitioner believed she was exempted from the FSET program. The agency may only act on information that a person provides. Thus, the agency correctly terminated the petitioner’s FS benefits prior to the receipt of these letters.

Even if the petitioner had presented the letters earlier, the letters do not qualify the petitioner for an FSET exemption. She has not been found disabled for the Social Security Administration or any other State Agency. She goes to physical therapy three times per week for 1.5 hours. I understand that the petitioner had foot pain, but I cannot see how this foot pain would prevent her from completing FSET activities or working 20 hours per week. FSET activities are generally sedentary. The FSET program could accommodate her needs. Given the limited information she provided, I believe that there are also jobs in the national economy that she could perform and could apply for through the FSET program. For all these reasons, the agency correctly terminated the petitioner's FS benefits for failing to participate in the FSET program.

Finally, as a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility ([6.1.3.3](#)). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;
 - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

The petitioner needs to get a job, participate in *another* allowable work (NOT FSET) program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. He would be well-advised to contact a Miles income maintenance worker to discuss ways to regain eligibility or he will remain ineligible through the 36 month period. If the petitioner's doctor believes that the petitioner is disabled, meaning she is unable to do any job in the national economy, then

the petitioner may reapply for FS benefits with a note from her doctor. She would then qualify for an FSET exemption.

CONCLUSIONS OF LAW

The petitioner failed to meet the FS work requirement for three time-limited benefit months in a 36 month period, and thus the agency correctly discontinued FS effective October 1, 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

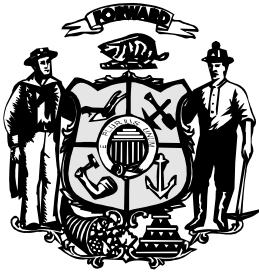
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of December, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 11, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability